(1)

11-12-01

No. 01-774

In The

Supreme Court of the United States

CITY OF LITTLE ROCK,

Petitioner,

v.

WILLIE MAE YOUNG,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether for purposes of determining municipal liability under 42 U.S.C. § 1983, the Fourth Amendment permits a municipality, or a county sheriff, a reasonable period of time after a court appearance to accomplish administrative tasks required to out-process pretrial detainees whose charges are dismissed?

Whether pursuant to 42 U.S.C. § 1983 a municipality, which in accordance with state law uses a county jail to detain persons arrested for state criminal law violations, may be held liable for the unconstitutional acts of county jail employees committed without the participation or knowledge of the city?

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PETITION FOR WRIT OF CERTIORARI

The City of Little Rock respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, filed on May 2, 2001, is reported at 249 F.3d 730 (8th Cir. 2001) and is reproduced as Appendix (App.) 1 through 15. The order of the court of appeals denying rehearing en banc and rehearing by the panel was filed on August 14, 2001 and is reproduced at App. 33. The relevant prior opinion and orders of the district court are unreported and are reproduced herein as App. 16 through 32. Page references are to the version in the appendix.

JURISDICTION

The court of appeals entered its judgment on May 2, 2001 and denied rehearing en banc and by the panel on August 14, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fourth Amendment to the U.S. Constitution states:

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> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

42 U.S.C. § 1983 states:

> § 1983. Civil Action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Ark. Code Ann. § 12-41-502 (Michie Repl. 1995) states:

> 12-41-502. Supervision.
>
> The sheriff of each county in this state shall have the custody, rule, and charge of the jail

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within his county and all prisoners committed in his county, and he may appoint a jailer for whose conduct he shall be responsible.

Ark. Code Ann. § 12-41-503 (Michie Repl. 1995) states in relevant part:

12-41-503 Management of local jail populations.

(a) Sheriffs and other keepers or administrators of jails within the State of Arkansas are responsible for managing the populations and operations of their respective facilities in compliance with the laws and constitution of this state and within the requirements of the United States Constitution.

STATEMENT

On November 11, 1996, Respondent Willie Mae Young (Ms. Young) was arrested pursuant to a failure to appear warrant issued for her sister-in-law who had provided Ms. Young's name as an alias. Because there was a hold on the warrant, Ms. Young was detained in the Pulaski County jail until her arraignment in Little Rock Municipal Court on November 13, less than 48 hours later.

The County Sheriff's office, pursuant to its policies, transported Ms. Young to the court hearing wearing a county-issued orange jumpsuit jail uniform. Her own clothing and personal belongings were at the jail.

Ms. Young, who was represented by counsel, plead mistaken identification. The state court judge ordered a fingerprint comparison and, after it exonerated her, ordered Ms. Young released. In accordance with the Court's procedures, a speed letter was prepared which

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stated Ms. Young was to be released if there were no other holds pending against her. App. 38.

Under Arkansas statutory law, the County Sheriff is responsible for the operation and maintenance of the county jail in accordance with state standards and federal constitutional requirements. Ark. Code Ann. § 12-41-502, 503 (Michie Repl. 1995). The City of Little Rock, having no jail of its own, presents persons arrested for state criminal law violations to the County Sheriff to be detained. County policy requires written, not verbal, authority for the jail to release a detainee. [R. 6/15/99 pp. 78-79.] The speed letter issued by the court after Ms. Young's appearance, as a part of its standard practice, noted that Ms. Young was to be released "if no other detainers." App. 38.

After the Court made its finding, Ms. Young was taken by the Court's bailiff to a lock-up facility near the courtroom, pursuant to County policy, and held for approximately 30 minutes until transport officers from the Pulaski County Sheriff's Office arrived to return her and other detainees to the jail. Ms. Young's defense counsel raised no objection to her continued incarceration.

Once at the jail, members of the Sheriff's office took various actions to process detainees. The out-processing includes transporting a detainee to the jail, reviewing any speed letter sent by the Court, accounting for the detainee, returning any personal property to the detainee, checking for other property in the detainees' individual cell, and checking to see if there are any additional outstanding warrants. This process for Ms. Young took approximately two and one-half hours.

Not part of any authorized County policy, and unknown to the City, Ms. Young was subjected to a strip search by a County employee. The City does not contest that this search was unconstitutional and Little Rock Assistant Chief of Police Stuart Thomas noted he knew of no other case like Ms. Young's. [R. 6/15/99 p.128]

State statute provides the County Sheriff with authority to operate the county jail. Ark. Code Ann. § 12-41-502 (Michie Repl. 1995). The City did not delegate authority to the County Sheriff. State statute provides that authority. In fact, the County Sheriff, Randy Johnson, testified that he was in charge of the jail and that county policies exist for operating the jail, which includes booking, housing, transporting, and releasing persons in custody. [R. 6/15/99 p.61, 77]. Little Rock Assistant Chief Stuart Thomas testified that while the sheriff might listen to comments from local governments, all final decisions about operating the jail were the sheriff's. [R. 6/15/99 pp.119-20.] Prior to trial, Pulaski County settled Young's claims for $47,500.

The jury returned a verdict against the City for $35,000 in damages for the 20 to 30 minutes Ms. Young testified she was held in a holding cell at the Little Rock municipal court [R. 6/14/99 p.47] – a state court under the Arkansas Constitution – and $65,000 in damages for the time she was in the custody of Pulaski County Sheriff's employees.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. This case provides the Court the opportunity to declare as a matter of law that no constitutional violation occurs when a local government acts within a reasonable time to complete the release process for a pretrial detainee in custody after a court order of acquittal, dismissal, or release.

a. The impact of the decision in this case is enormous. Pursuant to 42 U.S.C. § 1983, the Eighth Circuit upheld a $65,000 verdict against a City for the two and one-half hours it took a county sheriff in the State's major population center to out-process a person released from custody. No similar judgment exists in any recorded opinion.

b. Further, the Eighth Circuit had no problems in upholding the $35,000 for the 30 minutes it took to pick Ms. Young up for return to the Pulaski County jail. Even defendants acquitted in federal court of criminal charges, if in custody prior to trial, are returned to the U.S. Marshall's office for 10 to 15 minutes to assure that there are no outstanding warrants. Throughout the country, the practice of taking pretrial detainees to Court in distinctive garb – an orange jumpsuit – is commonplace as a security measure. Therefore, if this case stands, the failure of a city to arrange the immediate release and transportation of a county prisoner will result in Section 1983 liability for a Fourth Amendment violation. That is not the law. In other words, this case can stand for the proposition that the Fourth Amendment requires a city to operate a special taxi service for the various state courts

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located within a county. Of course, no such requirement exists.

c. The Fourth Amendment only prohibits unreasonable seizures. The Court has ruled as a matter of law that a prompt judicial hearing within 48 hours of a warrantless arrest to determine if probable cause exists, avoids constitutional liability. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). The Court should take this case to rule as a matter of law that taking a reasonable amount of time to out-process a detainee from custody does not implicate the Fourth Amendment.

d. Instead, the District Court permitted the jury to become enmeshed in the minutiae of county jail regulations on release procedures, a result denied even to federal judges. *See Lewis v. Casey*, 518 U.S. 343, 362 (1996). What is worse, though, is that the Eighth Circuit permitted the jury verdict – which refused to recognize that some time is required for out-processing – to stand because "[c]ertainly the jury might have accepted this argument, but we do not think it had to." App. 10.

e. Presently, the federal circuit courts of appeal are split on the question of whether a municipality, or a county sheriff operating a county jail, must be accorded reasonable time to accomplish administrative tasks required to out-process a detainee after charges against the detainee are dismissed. *Compare Young v. City of Little Rock, with Lewis v. O'Grady*, 853 F.2d 1366, 1369-70 (7th Cir. 1988); *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968), *cert. denied*, 396 U.S. 901 (1969); (jailer who fails to comply with a court-ordered release does not commit "an instant [constitutional] tort at the moment the prisoner should

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have been released."); *Mason v. Stock*, 955 F. Supp. 1293 (D. Kan. 1997) (short delay after grounds for detention have dissipated not unconstitutional); *Pennington v. Hobson*, 719 F. Supp. 760, 779 (S.D. Ind. 1989) ("there is a substantive due process right to release within a reasonable amount of time after law enforcement officials learn that a detainee is innocent of the charges.").

f. The impracticality of a courtroom release, which was addressed by the Seventh Circuit's *Lewis* opinion, was also addfessed in this case. Assistant Little Rock Police Chief Stuart Thomas testified to the practical difficulties of releasing detainees directly out of a courtroom. (R. 110-13, 6/15/1999). Detainees are dressed in uniforms owned by the county while their own clothing, identification, and possessions are at the jail. The county arranges secure transportation for detainees back to the jail and without that secure transportation, there would be myriad difficulties with allowing them to make their way independently back to the jail with the paperwork authorizing their release. Jail computer records, until updated, would show the person was, or should be, in custody of the jail. That fact and the wearing of the orange jumpsuit jail uniform would subject detainees to considerable inquiry from law enforcement officers, given that the jail uniform is a signal that the person is in custody and that something is awry if a person is unaccompanied and walking or driving around.

g. Indeed, as noted above, even in the face of systematic delays in the release of prisoners, a federal district court would be restrained to enter injunctive relief that required a local government immediately to transport and release such a prisoner (much less make a City

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liable for not taking such control and action over a county prisoner). Yet, this case permits a jury to impose significant liability because, as the Eighth Circuit said, it does not choose to accept the argument "that some period of time must be allowed for an order to be carried out, and that certain administrative formalities (referred to as out-processing) are permissible." App. 10.

h. How will city officials determine which prisoners have to be immediately transferred to a county jail, and which ones will not? Even if a category is ultimately defined by judicial gloss, are cities subject to strict liability pursuant to Section 1983 if they cannot immediately transport a particular prisoner? For that matter, in a situation such as this one where the County, a distinct government, operates the jail pursuant to State law, and the County Sheriff has total statutory control over jail procedures, will a city be liable even though the county declares that no such immediate transfers are to take place? More to the point, should there be any constitutional liability absent a finding that the transport procedures are, in and of themselves, unreasonable under the Fourth Amendment?

i. There are cases, which cannot be relied upon because they are unpublished, that clearly hold there is no constitutional violation presented in similar circumstances. This Court should use this case to declare that if there are reasonable procedures for the out-processing of a pretrial detainee ordered released by the Court, no constitutional violation occurs because of the two hours necessary to carry out those procedures.

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II. The Court should resolve a conflict among the circuits as to whether one local government, which after the arrest of an individual has no authority over the manner in which the person is detained, may be held liable under 42 U.S.C. § 1983 for the actions of another local government, or its employees, which is responsible for the detention of arrestees and which violates the constitutional rights of the person detained.

a. For municipal liability to attach under 42 U.S.C. § 1983, municipal policy or custom must cause the constitutional violation. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). This Court has stated that "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Board of County Comm'rs of Bryan County, Okla. v. Brown*, 117 S.Ct. 1382, 1388 (1997). The Eighth Circuit's decision in this case gives a wholly different interpretation to that rule than does the Sixth Circuit in *Deaton v. Montgomery County, Ohio*, 989 F.2d 885, 888 (6th Cir. 1993).

b. Here, the Eighth Circuit declared that it was "far from unfair to attribute to the City the policies routinely used by the County jail in the housing and processing of City prisoners." App. 12. The basis for this conclusion was the fact that county personnel chained prisoners leaving the jail and transported them back to the jail. In addition, the Eighth Circuit concluded that strip searching prisoners was a routine procedure, although no evidence in the record supported such a conclusion, much less demonstrated that City officials knew of any such

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procedure being employed against persons returned to the jail for out-processing.

c. In *Deaton*, the Sixth Circuit was asked to decide whether Section 1983 liability for the violation of a constitutional right by city personnel operating a city jail was properly attributable to the county that had contracted with the city for it to provide jail services. The court held that absent notice of such violations, "one may assume that a governmental entity, housing prisoners, is in compliance with state law." *Deaton*, 989 F.2d at 888. Hence, the county could not be deemed the moving force behind any constitutional violation that occurred simply because it contracted with the city to house its prisoners.

d. Further, unlike the Eighth Circuit, the Sixth Circuit ruled that since these were two distinct governmental units, as opposed to a government and a private contractor, there was absolutely no reason to hold one government liable for the actions of another. Other courts have found that harm occurring at one governmental entity's jail should not be attributable to a different local government. *Patrick v. Jasper County*, 901 F.2d 561, 569 (7th Cir. 1990) (" . . . once [the plaintiff] was transferred to the LaPorte County jail, he was no longer within the control, at least for detention purposes, of Jasper County policy making officials. . . . "); *Carter v. Mayor and City Council of Baltimore*, 2001 WL 1092108 (D. Md. Sept. 13, 2001) ("no showing that a persistent and widespread municipal practice existed which resulted in the erroneous arrest and detention of the plaintiff"); *Sampson v. City of Xenia*, 108 F. Supp. 2d 821, 839 (S.D. Ohio 1999) (action against the city dismissed, even though it had arrested a suspect who was then mistakenly confined for

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three months in a county jail after all charges were dismissed because the city does not establish policies or customs of the municipal court at which slips in record keeping had failed to ensure the detainee's release).

e. Yet, the Eighth Circuit's decision in *Young* is not an isolated anomaly. A federal district court has relied upon *Young* to assess municipal liability under Section 1983 when it considered the "interesting question of institutional responsibility" where the "plaintiffs' claims fit none of the standard analytic models for municipal liability." *Ford v. City of Boston*, 154 F. Supp. 2d 131, 148-49 (D. Mass. 2001). (A distinguishing feature in *Ford* is the district court's finding that unconstitutional booking searches had been conducted at the jail for years according to an explicit policy).

f. Even if Ms. Young's delayed release might give rise to a constitutional violation, there was nothing to show that this delay, or the strip search of Ms. Young by county officials, was other than a one-time aberration. Certainly no action taken by a person delegated final authority by the City caused Ms. Young's injury; nor was there widespread or persistent misconduct by city employees which could be fairly said to constitute a custom or usage which held the force of law. *See, e.g., Dettelis v. City of Buffalo*, 3 F. Supp. 2d 341, 348 (W.D.N.Y. 1998) (five illegal searches in seven years not a custom); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1444 (9th Cir. 1989) ("[c]onsistent with the commonly understood meaning of custom, proof of random acts or isolated events are insufficient to establish custom.").

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g. Indeed, this Court recently revisited its conclusions on this question of vicarious municipal liability under Section 1983, and stated that "rigorous standards of culpability and causation must be applied" to ensure that liability is not imposed on a municipality simply on the basis of a theory of respondeat superior. *Brown*, 520 U.S. at 415.

h. In this case, a city has been subjected to Section 1983 liability for the actions of a county, and county officials, to which state law provides control over a particular area, i.e., operation of a county jail. Ark. Code Ann. § 12-41-502 (Michie Repl. 1995). Yet, unlike the situation in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), the City did not even participate in the alleged unconstitutional actions. A bailiff for a state court judge escorted Ms. Young back to the lockup after the Judge's decision to release her (without any objection from her defense lawyer). A county sheriff's employee transported her to the county jail where different county employees conducted the out-processing and the unconstitutional strip-search. Surely, no less rigorous standards than those this Court outlined in *Brown* apply when it is the behavior of an employee of another governmental entity, over whom the City has no authority, control, or responsibility, that violates the constitution.

i. If so, the Court should grant certiorari in this case and declare that a city is not responsible for the actions of a county official, particularly when there is no notice of any constitutional violation, and the county official is performing actions commended by state law to the county.

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j. The Eighth Circuit did not find fault with the jury verdict in this case even though the opinion does not discuss the District Court's failure to instruct the jury that the county had this responsibility for jail operations pursuant to state statute. (App. 14-15).

k. Nor did the Eighth Circuit find fault with the District Court's failure to instruct the jury that some City action had to be the "moving force" behind a violation of Ms. Young's constitutional right. (App. 14). Yet this Court has clearly ruled that Congress intended municipal liability to be limited to "situations that municipalities could control, without obligating municipalities to control the conduct of others." *Pembaur*, 475 U.S. at 478-79; *Carter*, 2001 WL 1092108 (D.Md. Sept. 13, 2001) (plaintiff's wrongful 36-day confinement not actionable against city where no persistent and widespread municipal practice existed which caused the erroneous arrest and detention).

l. Already a district court in the Second Circuit has followed the Eighth Circuit's rationale to find municipal liability in this case. As more district courts in that populous jurisdiction do so, the clear conflict between the Sixth and the Eighth Circuits will be more compelling, time consuming, and expensive for law enforcement and local governments as they try to discern the proper application of Section 1983 in the context of pretrial detainees arrested by one government, but incarcerated and cared for by another. In light of the existent conflict, this Court should take this case and announce the proper constitutional rule to apply in this situation.

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CONCLUSION

This case impacts thousands of local, state, and federal law enforcement agencies throughout the country. It currently stands for the proposition that a city is responsible to pay a $100,000 judgment for the actions of county jail personnel even though, pursuant to state law, the City has absolutely no authority for the operation, maintenance, or regulation of the county jail. The fact that a federal district court in Boston has already relied upon this ruling demonstrates that its impact is not limited, or that its error is a mere aberration. (If this Court believes that the case is a mere aberration, then summary reversal is appropriate). However, because of the important constitutional questions outlined above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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App. 1

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 99-3595EA, 99-3601EA, 99-4218EA

No. 99-3595EA

Willie Mae Young,

Appellee,

v.

City of Little Rock, a Public Body Corporate,

Appellant.

On Appeal from the United States District Court for the Eastern District of Arkansas

No. 99-3601EA

Willie Mae Young,

Appellant,

v.

City of Little Rock, A Public Body Corporate; James Brown, Badge Number 16781, Little Rock Police Department, in his individual capacity; Robert Haggard; and

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Shirley Shook, in her individual capacity,

Appellees.

No. 99-4218EA

Willie Mae Young,

Appellee,

v.

City of Little Rock, a Public Body Corporate,

Appellant.

On Appeal from the United States District Court for the Eastern District of Arkansas.

Submitted: December 15, 2000

Filed: May 2, 2001

Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD and HANSEN, Circuit Judges.

RICHARD S. ARNOLD, Circuit Judge.

A jury awarded Willie Mae Young $100,000 in her 42 U.S.C. § 1983 action arising out of her arrest and detention by the City of Little Rock Police Department. Ms. Young and the City cross-appeal, each challenging var-

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ious aspects of the District Court's[1] final judgment. We affirm in all respects.

I.

A car in which Ms. Young was a passenger was stopped for a minor traffic violation by Little Rock Police Officer James Brown at about 3:30 p.m. on a Saturday afternoon. Officer Brown's car computer indicated an active arrest warrant for Ms. Young (for failure to report and pay probation fees). He called a police communications operator, Shirley Shook, for verification of the warrant and was told that the warrant was for Ms. Young. In actuality, this warrant was for Ms. Young's sister-in-law, Glenda Marie Walker, who had on occasion used Ms. Young's name as an alias. Ms. Shook misread the information on her computer and failed to notice that Ms. Young's name was listed only as an alias.

Officer Brown took Ms. Young to the Pulaski County jail. The City does not have its own jail but uses the one operated by Pulaski County. At the jail, the intake deputy, Yvonne Engram, accepted Ms. Young for lock-up even though the copy of the warrant which had been faxed to the jail showed Ms. Walker as the subject of the warrant. When he saw the copy of the warrant and attached photograph, Officer Brown thought he had made a mistake and at approximately 6:00 p.m. told a supervisor on duty, Sergeant Robert Haggard, about it. Sergeant Haggard told Officer Brown to seek guidance from the Little Rock

[1] The Hon. Susan Webber Wright, Chief Judge, United States District Court for the Eastern District of Arkansas.

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Police Department's detectives' office. Officer Brown did so and reported back that he was told Ms. Young would have to remain in jail until Monday morning, when a judge could decide what to do. During this detention, Ms. Young was strip searched.

On Monday morning in the courtroom, the municipal court judge determined that the wrong person had been arrested and ordered Ms. Young released. Instead of releasing Ms. Young, a City police officer returned her to a holding cell, where she remained for approximately 30 minutes. She was then chained to other female detainees and transported back to the County jail, where her clothing and belongings were. While there – approximately 2-1/2 hours – she was again strip searched. Out-processing was completed and Ms. Young was released at about 2:00 p.m.

II.

Ms. Young filed this action under 42 U.S.C. § 1983 claiming that her Fourth and Fourteenth Amendment rights were violated. She named as defendants the City; Officer Brown, Ms. Shook, Sergeant Haggard, and Deputy Engram, all in their individual capacities; and Randy Johnson, in his official capacity as Pulaski County Sheriff.

In considering pre-trial motions to dismiss and for summary judgment, the District Court determined that Ms. Young's arrest and pre-hearing detention did not violate the Fourth Amendment. The Court first concluded that Officer Brown's actions at the time of the arrest were objectively reasonable in light of the facts and circumstances confronting him, and that Ms. Shook did not

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know her actions would lead to the arrest of an innocent person. The Court then concluded that the judicial hearing to determine probable cause which was provided within 46 hours of Ms. Young's arrest met constitutional requirements for her pre-hearing detention. According to the Court, an objective view of the facts known to Officer Brown and Sergeant Haggard prior to the hearing "did not negate, beyond a reasonable doubt, the probable cause that supported Young's detention." The Court also concluded that no evidence existed that the City had a policy or custom which caused Ms. Young's pre-hearing detention. Based on these conclusions, the District Court dismissed Sergeant Haggard, Ms. Shook, and Ms. Engram, granted summary judgment to Officer Brown, and granted summary judgment to the City for any claim based on the arrest and detention before the judge's order of release.

Sheriff Johnson and Ms. Engram, the County defendants, settled the claims against them for $47,500, and the remaining claims against the City, based on Ms. Young's post-hearing detention, proceeded to trial. The jury returned a verdict in favor of Ms. Young and, by special verdict form, awarded her damages for two separate periods of time – $35,000 for the time in the holding cell ("period one"), and $65,000 for the time back at the County jail ("period two").

The District Court offset this award in light of the settlement with the County defendants. The Court noted that after deduction of her attorney's fees, Ms. Young received $31,666.67 of the $47,500 settlement. Exercising its discretion to award Ms. Young attorney's fees under 42 U.S.C. § 1988(b) as the prevailing party, the Court

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offset the jury award by the $31,666.67 Ms. Young actually received from the County. The Court denied the City's post-trial motion for judgment as a matter of law, for a new trial, or for remittitur, concluding that the jury's verdict was supported by the evidence. By separate order, the Court granted Ms. Young $86,013.08 in attorney's fees. This figure resulted after a reduction equal to the amount of fees the plaintiff had paid out of the County's settlement.

III.

On appeal, the City first argues that, as a matter of law, there was no violation of Ms. Young's constitutional rights during "period one," while she was awaiting the completion of necessary paperwork for her release. The City next argues that, as a matter of law, the harm sustained by Ms. Young during "period two" is not attributable to the City, but rather to the County. In particular, the City argues that there was no causal link between the strip search and City custom or policy.

The City also asserts evidentiary error in the admission of evidence of Ms. Young's treatment while in County custody before going to court, and instructional error in the District Court's rejection of the City's proposed instructions (1) on the causation element of an unreasonable seizure, (2) that the municipal court judge and his bailiff were not City actors, and (3) that under Arkansas law, the sheriff of a county is solely responsible for the County jail.

The City also argues that the entire amount of the settlement with the County should have been offset, and

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that the amount of damages awarded by the jury was excessive.

Ms. Young argues on appeal that she stated a claim against the City for a custom or policy that allows too many mistaken-identity arrests, and that, accordingly, her claim for damages against the City for the one-and-one-half days of detention *before* the municipal judge's order of release should not have been dismissed. Ms. Young also argues that her claims against Officer Brown, Ms. Shook, and Sergeant Haggard should not have been dismissed prior to trial. Officer Haggard argues in response that the District Court correctly determined that a constitutional claim was not stated against him, and that, alternatively, he is entitled to qualified immunity.

IV.

We review the District Court's grant of motions to dismiss and motions for summary judgment de novo. *Anderson v. Franklin County*, 192 F.3d 1125, 1131 (8th Cir. 1999). A motion to dismiss should be granted only if, taking the allegations in the complaint as true, it appears beyond doubt that plaintiff can prove no set of facts demonstrating entitlement to relief. *Id.* A motion for summary judgment should be granted only if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).

We first conclude that the District Court's ruling that no claim was stated against Officer Brown or Ms. Shook arising out of the arrest and initial detention was correct.

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When Officer Brown made the initial arrest, his car computer showed that there was a warrant for Ms. Young, and Ms. Shook had verified this information over the radio. Officer Brown had an objectively reasonable basis for making the arrest. As to Ms. Shook, she was mistaken, but the mistake was not deliberate. It was occasioned, rather, by the press of business and by the speed with which officers in Ms. Shook's position were required to act. A mistake made under these conditions, in our view, is not sufficient to render an arrest "unreasonable" within the meaning of the Fourth Amendment. Nor do we see any evidence of a custom or policy of the City here that led to the mistaken arrest. The City can be faulted for not putting in place more precise procedures, but there is no evidence of a custom or policy of making mistaken arrests. Ms. Shook's mistake, and Officer Brown's reliance on it, amounted to nothing more than negligence, which normally does not give rise to a claim under § 1983. See *Lane v. Sarpy County*, 165 F.3d 623, 624 (8th Cir. 1999).

The next sequence of events, occurring after Ms. Young had been taken to the jail, presents a closer question. By this time, Officer Brown had realized that there was no warrant for Ms. Young in her own name, and that her name appeared in "the system" only as an alias for her sister, Glenda Marie Walker. He looked at Ms. Walker's photograph and formed the opinion that Ms. Young was not the person in the photograph. There is, however, no evidence that Officer Brown had the authority to release Ms. Young. It seems to us that he did what he should have done: he reported the facts to Sergeant Haggard, a superior officer. Sergeant Haggard advised Officer Brown to consult the detectives' office, and,

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according to Officer Brown, he was then instructed that the matter would have to wait for action by the court, which would not occur until Monday morning.

Ms. Young argues that Officer Brown and, through him, Sergeant Haggard, had actual knowledge at this point that Ms. Young had been improperly arrested. We think this overstates the case. Certainly there was reason to question whether a mistake had been made, but the situation was equivocal. Officer Brown had originally been informed that there was a warrant for Ms. Young in her own name. Thereafter, he learned that Ms. Walker had been using Ms. Young's name as an alias. The photograph did not match the appearance of the person arrested. On these facts, we believe that an objectively reasonable officer could have decided to wait for a judge to make the final determination. That the arrest occurred on a week end, when the judge was not readily available, is unfortunate. Indeed, it is more than that: it shows a decided lack of solicitude on the part of the City for the liberty of its citizens. We have to remember, however, the conditions under which police officers must work. We believe that Officer Brown and Sergeant Haggard were entitled to qualified immunity: that is, that a reasonable officer could have thought it reasonable to wait for a judge's decision.

This conclusion is supported by the Supreme Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979). The case holds that the Fourth Amendment is not violated when an individual is arrested and detained (mistakenly) pursuant to a valid warrant for another person, where the person detained receives a probable-cause hearing within three days of the arrest. *Id.* at 142-43. The Court declined

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to impose upon police officers an affirmative duty of investigating claims of mistaken identity. See also *Lane v. Sarpy County, supra; Johnson v. City of St. Paul,* 634 F.2d 1146 (8th Cir. 1980). The plaintiff argues that *Baker* is distinguishable. In *Baker,* the fact of the mistaken identity was not discovered for three days. Here, plaintiff argues, the defendants knew that they had the wrong woman, but decided to keep her detained for a probable-cause hearing on Monday morning nonetheless. If we were faced head on with the question whether the Fourth Amendment was violated, this distinction might well prove dispositive. But when the doctrine of qualified immunity is taken into account, we believe the District Court correctly held that these individual police officers are not liable in an action for damages. We decline to hold officers in this situation to the niceties of legal distinctions, even though the distinctions might seem persuasive to judges in the light of hindsight.

V.

We now turn to the portion of the case that went to the jury – the action against the City of Little Rock for events that took place after Ms. Young was ordered released by the Municipal Court. The City argues that some period of time must be allowed for an order of release to be carried out, and that certain administrative formalities (referred to as "out-processing") are permissible. Certainly the jury might have accepted this argument, but we do not think it had to. When Ms. Young appeared in court on Monday morning, the judge ordered

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a thumbprint comparison, a more reliable means of identification than a photograph. On the basis of this comparison, the court found that Ms. Young had not been properly arrested. The court stated: "show this lady released." Instead of releasing her, however, officers returned her to the holding cell, along with other prisoners, for transportation back to the jail. She was chained to five or six other female inmates, loaded onto a van, transported to the jail, and there strip searched, all of this occurring after the court had ordered her released. The strip search took place in front of five or six other people. Only after this was she allowed to change into her own clothes and actually set free.

The City contends that the phrase "show her released" is not the same thing as ordering her released in the courtroom. The matter, we suppose, is arguable, but it is not so clear as to make the jury's verdict unreasonable as a matter of law. Indeed, the City itself, in its answer to paragraph 41 of the complaint, stated that "Judge Munson . . . dismissed the charge as to Mrs. Young and ordered her released. . . . " The City says it was not practical to release her at that time, because she was still in jail clothing (an orange jumpsuit). We think the jury could reasonably conclude that this aspect of the problem could have been left up to the plaintiff. In addition, the City could have had her transported back to the jail without chaining her, and certainly there was no necessity whatever to strip search a person who was wholly innocent of any charge. The whole incident is shocking.

As the City points out, it does not operate the jail. The City of Little Rock has no jail of its own. It contracts

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with the County for the housing of City prisoners. What the County does with prisoners, therefore, the City says, is not its problem, and there is no vicarious liability under § 1983. Although this line of argument has some surface appeal, we do not believe that the jury had to accept it. City employees were aware of the custom of chaining prisoners, and they knew that Ms. Young was being taken back to the jail. Strip searching of prisoners is routine procedure, and the jury could reasonably infer that the City knew that a person entering the jail, in jail clothing with a group of other detainees, would be strip searched. In these circumstances, it is far from unfair to attribute to the City the policies routinely used by the County jail in the housing and processing of City prisoners.

The City argues that the verdict is too high – $35,000 for the time spent in the holding cell at the Municipal Court after the order of release, and $65,000 for the time spent at the jail before release actually occurred. We grant that the amounts are high, but they are not so excessive as to be shocking. The liberty of the individual is at stake here. A citizen had been arrested, erroneously as it turned out, and a court had ordered her released. The court's order had not been followed. Instead, a process of administrative foot-dragging took place, characterized by gross indignities. There was evidence of serious psychological harm, including the facts that Ms. Young was reluctant to leave her house for a substantial period of time following the incident, and that she became ill when questioned by a police officer in front of her home (in a completely unrelated incident). We cannot say that the jury's award was "shocking, monstrous, or constitute[d] a

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plain injustice." *City National Bank v. Unique Structures, Inc.*, 929 F.2d 1308, 1315 (8th Cir. 1991).

VI.

The City argues that it did not receive sufficient credit for the settlement paid by the County. This argument is based on the Arkansas version of the Uniform Contribution Among Joint Tortfeasors Act, Ark. Code. Ann. § 16-61-204 (Michie 1987). This statute reads as follows:

> A release by the injured person of one (1) joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

The County defendants paid $47,500 to settle the claims against them. This amount included claims for attorneys' fees and costs. The fee, by agreement between Ms. Young and her lawyers, was one-third of the recovery. The remainder, $31,666.67, went to the plaintiff. When the court entered judgment after the $100,000 jury award, this figure was reduced by the amount that Ms. Young had received personally from the settlement. Thus, the judgment against the City was for $68,333.33.

The City argues that it should have received an additional credit, against the $100,000 jury award, of $15,833.33. The District Court rejected this argument, holding that under 42 U.S.C. § 1988(b) it had discretion to

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award attorneys' fees to a prevailing party in an action brought to enforce § 1983. When awarding attorneys' fees after the entry of judgment, however, the District Court reduced the amount awarded by the portion of Ms. Young's settlement proceeds that represented fees. An award of fees is reviewed for abuse of discretion only. The trial court knows the case best. It knows what the lawyers have done, and how well they have done it. It knows what these efforts are worth. It knows how to balance portions of the case together to reach a just and reasonable award. We see no abuse of discretion here.

If the District Court had first reduced the $100,000 jury verdict by the full amount of the settlement paid by the County, it would then have awarded a judgment against the City for $52,500, instead of the actual award, which was something over $68,000. In this event, the City argues, the results obtained against it would have been somewhat less advantageous to the plaintiff, and the fee awarded might have been accordingly reduced. We acknowledge the theoretical force of this argument, but we believe the District Court was well aware of what it was doing, and that the ultimate fee award, which took into account the fees that had been paid out of the County settlement, was reasonable. Accordingly, the fee award is affirmed.

VII.

As we have indicated, the City also argues that there was error in the admission of evidence, and that certain jury instructions it requested should have been given. These arguments do not require extended discussion.

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There was no abuse of discretion in the admission of evidence. The instructions as given, when considered as a whole, correctly stated the law. The jury was required to find that Ms. Young's treatment, after she was ordered released, was a direct result of a policy of the City. Certainly it is true, in the ordinary case, that a sheriff is solely responsible for the operation of the county jail, but this is not an ordinary case. The County jail was functioning, in effect, as the City jail, and the jury could reasonably infer that the City was aware of the policies and practices customarily followed by the County at the jail.

The judgment and the award of attorneys' fees and costs are affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAY YOUNG, Plaintiff	NO: LR-C-97-0035
VS.	(Filed Nov. 15, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	

ORDER

After prevailing at trial, plaintiff Willie Mae Young (Young) filed a motion for attorney's fees and costs, pursuant to 42 U.S.C. § 1988, seeking $89,465.33 in attorney's fees and $2,191.25 in costs [docket no. 126].[1] Separate defendant, the City of Little Rock (City), responded [docket no. 136], and Young replied to the City's response [docket no. 137]. The matter is already for decision, and after careful consideration, the Court determines Young's motion should be granted in part and denied in part.

I. Background

Young sued the City, City employees in their individual capacities, and Pulaski County (County), claiming the defendants arrested, detained, and searched her in violation of the United States Constitution. She alleged the

[1] In light of 19.73 hours spent responding to the City's objections to her motion, Young increased her request for attorney's fees to $93,411.33. *See* docket no. 137, attachment E.

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defendants unlawfully searched and detained her during two periods – before and after a probable cause hearing in which a judge ordered her release. The Court dismissed claims against the defendants sued in their individual capacities and claims against the City and County involving Young's arrest and pre-hearing detention. However, the Court retained Young's claims against the City and County involving her post-hearing detention and search.

Young settled with the County but presented her claims against the City to the jury, which returned a verdict in her favor and awarded her $100,000.00.[2] Pursuant to a motion by the City, the Court reduced Young's jury award by the amount of her settlement proceeds from the County, less the portion of proceeds attributable to attorney's fees.[3]

II. Discussion

A. Attorney's Fees

Title 42 U.S.C. § 1988 provides that in federal civil rights actions "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." "[A] plaintiff 'prevails' when actual relief on the merits of [his or her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Jenkins v. Missouri*, 127 F.3d 709, 713 (8th Cir. 1997) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)).

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[2] Docket nos. 113 & 118.

[3] Docket no. 118.

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Clearly, Young qualifies as a prevailing party, entitled to attorney's fees. In calculating her fee award, the Court will use the "lodestar" method, which entails multiplying the number of hours reasonably expended by the relevant market rate for legal services. *See Jensen v. Clarke*, 94 F.3d 1191, 1203 (8th Cir. 1996).

Reasonable Hours

Young apportions hours of work performed by her attorney, Mr. Robert Pressman, between two periods. For the first period 11/29/96 to 11/30/98, she seeks attorney's fees for 204.38 hours. For the second period, 12/8/98 to the present, she seeks attorney's fees for 354.71 hours.[4]

Young submitted documentation itemizing the amount of time Pressman expended on specific activities related to her representation.[5] The documentation shows that Pressman spent 18.45 hours responding to the City's post-trial motions after the Court entered an Order denying the motions.[6] The City asserts these hours were unnecessary and should not be included in the lodestar amount. The Court agrees and will reduce Young's award accordingly.

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[4] *See* docket no. 126, attachment A (requesting fees for 334.98 hours); docket 137, attachment E (requesting fees for an additional 19.73 hours).

[5] *See* docket no. 126, exhibit 1.

[6] *See* docket no. 126, exhibit 1, page 19; docket no. 125 (Order denying the City's post-trial motions).

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With the exception of work performed responding to the City's post-trial motions, the Court finds that Pressman expended a reasonable amount of time performing the documented activities. But because Young prevailed on only a portion of her original claims, the Court must determine whether to award her fees for work expended on matters on which she did not prevail.

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Supreme Court provided the model for determining whether fees are compensable under § 1988 in cases in which the plaintiff has prevailed on some but not all claims included in a lawsuit. Under *Hensley*, if "any issues on which the plaintiff lost are unrelated to those on which he won, the unrelated issues must be treated as if they were separate cases and no fees can be awarded. If however the claims on which the plaintiff lost are related to those on which he won, the court may award a reasonable fee." *Jenkins*, 127 F.3d at 716.

As explained in the Court's pre-trial Orders, the legal standards applicable to Young's arrest, pre-hearing detention, pre-hearing search, post-hearing detention, and post-hearing search require reviewing the specific facts surrounding each separate event.[7] The Court finds that Young's claims involving events occurring before the municipal judge ordered her release unrelated to the claims on which she prevailed: her detention and search occurring after the judge ordered her release. Thus "the hours spent on the unsuccessful claims should be

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[7] *See* docket nos. 69 & 87.

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excluded in considering the amount of a reasonable fee." *Hensley* at 1943.

Documents appended to Young's motion for attorney's fees do not distinguish between hours worked pursuing her successful and unsuccessful claims,[8] but in an attempt to account for work expended on her unsuccessful claims, Young requests only 30% of the hours Pressman worked from 11/29/96 to 11/30/98.[9] Young confines the 30% reduction to this period because on December 4, 1998, the Court dismissed Young's unsuccessful claims, and after that point, Pressman devoted his time to matters on which Young ultimately prevailed.

The City contends Young should receive an award based on 20% of the hours claimed (instead of Young's proposed 30%), asserting that Young's documentation is "replete with block billing entries, in which a number of different activities are lumped together . . . so that it is impossible to determine how much time was allocated to each activity."[10]

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[8] For example, Young's record of hours worked include the following:

12-04-96	legal research and make notes on content of the complaint
11-27-97	work on discovery
03-16-97	work on written discovery to L. Rock defendants, set two
06-12-97	work on dep. questions

Docket no. 126, exhibit 1.

[9] See docket no. 126, attachment A. Pressman worked a total of 681.27 hours during the first period.

[10] Docket no. 136, pages 6-7.

While Young bears the burden to establish entitlement to an award by documenting the appropriate hours of work expended, in cases involving multiple claims, "[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Hensley*, 103 S. Ct. at 1940-1941. In *Hensley*, the Supreme Court explained, "There is no precise rule for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." *Hensley*, 461 U.S. at 437. In this case, the Court finds an award based on 25% of hours worked before the Court dismissed Young's unsuccessful claims to be the most equitable way to account for her limited success.[11]

The City asserts that Young received attorney's fees as part of her settlement with the County and that the Court should reduce Young's award accordingly. Young reduced the amount she would have otherwise requested by $15,933.67, the portion of Young's settlement proceeds representing attorney's fees, and the Court finds Young's adjustment to be sufficient.

Finally, the City urges that Young should not be compensated for work performed prior to Mr. Pressman being formally admitted to participate in this case. Pressman does not reside in Arkansas and is not licensed to

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[11] Before the Court dismissed Young's unsuccessful claims, Pressman worked a total of 681.27 hours. *See* docket no. 126, exhibit 1, page 20. The Court will award an attorney's fee for 170.32 of the 681.27 hours.

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practice as a member of the Arkansas Bar. He represented Young as her attorney of record throughout this litigation but was not formally authorized to participate until June 7, 1999, a week before trial.

The Court finds that the date on which the Court formally accepted Mr. Pressman to participate in this case has no bearing on whether Young should be awarded an attorney's fee. To deny Young the majority of what she seeks on such narrow grounds would be inequitable and contrary to the purpose of § 1988.

Reasonable Rate

Young requests an award based on a rate of $250 per hour for 97.08 hours worked during the immediate trial period and $200 per hour for the remaining hours. She makes several points in support of the rates she requests, including the following. First, she asserts Mr. Pressman has thirty-four years experience, with much of his work involving civil rights litigation.[12] Second, she presents results from a 1995 survey of eleven Little Rock law firms, published in *Arkansas Business*, in which eight of the firms reported charging a top rate of $200 or more per hour.[13] Third, Young notes that in 1997, this Court awarded attorney's fees for Pressman's legal services in a Title VII case, based on a rate of $200 per hour.[14] Fourth, Young asserts that the complexity of her case warrants the hourly rates she requests.

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[12] Docket no. 126, attachment B, ¶¶ 1-3, 5-12, & 14.

[13] Docket no. 127, attachment A.

[14] Docket no. 127, attachment B.

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The City asserts Young has failed to provide sufficient evidence regarding Pressman's skill and experience as a litigator and that the requested rates of $200 and $225 per hour are excessive. The City proposes that the Court base an award on the average rate listed in the 1995 *Arkansas Business* survey results: $140.23.

An attorney's fee award should be calculated using market rates, in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. *McDonald v. Armontrout*, 860 F.2d 1456, 1458-59 (8th Cir. 1988) (citing *Blum v. Stenson*, 465 U.S. 886, 895-96, 896 n.11 (1984)). Factors particularly relevant in determining a reasonable rate include the novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation, and the results obtained. *Pennsylvania v. Delaware Valley Citizens' Council*, 106 S. Ct. 3088, 3098 (1986).

Young presents ample evidence showing Pressman to be a successful litigator, with significant experience in civil rights cases. Throughout this litigation Pressman worked diligently pursuing Young's claims against the City, which involved difficult issues regarding § 1983 municipal liability. Additionally, the results Pressman achieved were significant; the jury awarded Young the entire amount she requested.

The Court determines that a rate of $200 per hour is warranted. However, the Court declines awarding an increased fee for work expended during the immediate

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trial period and will base its award on a single hourly rate of $200.[15]

B. Costs

Young requests an award of costs, totaling $2,191.25.[16] Among costs Young itemizes are Mr. Pressman's travel expenses. The City notes that district courts within the Eighth Circuit have held such costs to be nontaxable under 28 U.S.C. § 1920.[17] However, under § 1988, a reasonable attorney's fee award may include reasonable out-of-pocket expenses incurred by an attorney and normally charged to a fee-paying client. *Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996). Further,

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[15] Young requested $225 per hour for 97.08 hours of work executed during the immediate trial period, asserting that during this period, Pressman was working alone and under considerable pressure.

[16] Docket no. 126, attachment A & B.

[17] Section 1988 allows a prevailing party "a reasonable attorney's fee as part of the costs." The Supreme Court has held that unless otherwise specified by statute, the term "costs" is defined according to 28 U.S.C. § 1920. *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980).

Section 1920 permits a judge or clerk of any court of the United States to tax as costs the following: (1) Fees of the clerk and marshal; (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and copies of papers necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services.

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in *Craik v. Minnesota State University Board* the Eighth Circuit held that a § 1988 fee award may include reasonable travel time billed at the same hourly rate as the lawyer's normal working time, reasoning that "counsel retained by clients who pay on a regular hourly basis customarily charge for travel time, and civil-rights counsel should be no worse off." *Craik*, 738 F.2d 348, 350 (8th Cir. 1984).

While the Court may award Young attorney's fees for Pressman's travel *time*, travel *expenses* do not constitute recoverable costs and may not be awarded as such. Because Young has not documented the time Pressman spent traveling, the Court cannot include Pressman's travel time in her attorney's fee award.

Young's request for costs includes Federal Express charges, and the City argues these are not allowable costs under 28 U.S.C. § 1920. The Court agrees that Federal Express charges are not listed among the allowable items of costs set out in 28 U.S.C. § 1920, but out-of-pocket expenses for express mail are "of the kind normally charged to clients by attorneys" and should be included in Young's attorney's fee award. *See Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996).[18]

Finally, the City objects to Young's claim for copying costs. Young requested 10 cents per copy for 2,500 copies, and the City objected that Young failed to support her

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[18] Young claims express mail charges for sending her amended and second amended complaint from Boston to Little Rock. *See* docket no. 126, attachment. Because these particular charges relate to Young's case as a whole, the Court will award costs based on 25% of these charges.

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claim with adequate documentation. In reply, Young submitted documentation supporting costs for 2,133 copies, for which the Court will award costs at 10 cents per copy.[19] The Court finds the remaining costs documented in Young's motion were reasonably expended.

III. CONCLUSION

THEREFORE, upon consideration of the plaintiff's motion for attorney's fees and costs and supplements and responses thereto, the motion is hereby GRANTED in PART and DENIED in PART [docket no. 126].

FURTHER, it is hereby ordered that attorney's fees be awarded to the plaintiff in the amount of $86,013.08.

506.58 hours[20] at $200 per hour	$101,316.00
Plus out-of-pocket express mail expenses	530.75
Less attorney's fees from County	(15,833.67)
	$86,013.08

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[19] Docket no. 137, attachment D. The Court computes Young's copying costs as follows:

Documented copies relating solely to Young's successful claims against the City	1552
Documented copies relating to all claims = 2,322 x 25%	581
	2,133

[20] This total includes hours 170.32 hours expended from 11/29/96 to 11/30/98 (681.27 x 25% = 170.32) and 336.26 hours expended 12/8/98 to the present (including 19.73 hours

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FURTHER, it is hereby ordered that costs be awarded to the plaintiff in the amount of $989.80.

Filing fee	$150.00
Charge for internal investigation report	28.50
Depositions (25% of total cost)	546.25
Charge for copies of criminal dockets	51.75
Copies (2,133 at 10 cents per copy)	213.30
	$989.80

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES COURT

This document entered on docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 11-15-99 by D. Collins

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responding to the City's response to Young's motion forattorney's fees and not including 18.45 hours spent responding to the City's post-trial motions.)

11/29/01 THU 18:06 FAX 402 341 8712 COCKLE PRINTING 049

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG, Plaintiff-	•	NO. LR-C-97-0035
VS.	•	(Filed July 12, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	•	

JUDGMENT ON JURY VERDICT

This action came on for trial June 14, 1999, before the Court and a Jury, the Honorable Susan Webber Wright, United States District Judge presiding. The issues having been duly tried, and after deliberating thereon, the jury returned a verdict on June 16, 1999 in favor of the plaintiff.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the plaintiff, Willie Mae Young, have and recover of and from the defendant, the City of Little Rock, the sum of $68,333.33[1] for damages, together with

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[1] The jury awarded damages for two separate periods of time. The first period includes the time Young spent in a holding cell at the Little Rock Municipal Courthouse, after a judge ordered her release. The jury assessed Young's damages for the first period at $35,000. The second period includes the time Young spent at the Pulaski County Regional Detention Facility. The jury assessed Young's damages for the second period at $65,000.

Pulaski County, originally named as defendant in this matter, settled with Young before trial. The City moved that

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interest from this date until paid at the rate of 5.163% per annum as provided by law, and her costs.

IT IS FURTHER ORDERED that the complaint against the John Doe defendant is hereby dismissed.

IT IS SO ORDERED THIS 12TH DAY OF JULY, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 7-12-99 BY J. DUGGARD

Young's award for the second period be reduced by the amount paid by the County. Additionally, Young's attorney filed a motion requesting entry of a judgment, taking account of the settlement [docket no. 117]. Arkansas has adopted the Uniform Contribution Among Joint Tortfeasors Act provision that provides a settlement with one tortfeasor reduces the claim against another tortfeasor "in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid." Ark. Code. Ann. 16-61-204. Accordingly, the Court agrees that the award should be reduced by the amount plaintiff received from her settlement with the city.

Young and the County settled for a total amount of $47,500.00, but Young received only $31,666.67, after deduction of her attorney's fee. Under 42 U.S.C. § 1988(b), this Court has discretion to award attorney fees to a prevailing party in an action brought to enforce 42 U.S.C. § 1983. This being such a case, the Court will offset Young's award by $31,666.67 – the amount she actually received in her settlement with the County.

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG, Plaintiff	•	NO. LR-C-97-0035
VS.	•	(Filed August 2, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	•	

ORDER

Trail [sic] on this matter concluded on June 16, 1999, when a jury returned a verdict for the plaintiff, Willie Mae Young, awarding her compensatory damages in the amount of $100,000.00. Pursuant to the jury's verdict, the Court entered judgment on July 12, 1999. Three post-trial motions are pending in this matter and ready for decision.

First, the defendant, the City of Little Rock, filed a motion for a judgment as a matter of law or (alternatively) for a new trial, remittitur, or alteration of the judgment. After careful consideration, and finding the jury's verdict supported by the evidence presented at trial, the Court denies the City's motion.

Second, the City filed a motion for stay of the judgment, pending disposition of the City's post-trial motions. Having denied the motions, the City's request for a stay of the judgment is denied as moot. The Court

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notes that the City may obtain a stay upon appeal, pursuant to Fed. R. Civ. P. 62(d), by giving a supersedeas bond "at or after the time of filing the notice of appeal."

Third, Young filed a motion requesting an extension of time in which to file a petition for attorney's fees until 10 days after the Court's resolution of the City's post-trial motions.

Local Rule 54.1 provides that a motion for attorney's fees shall be filed within 14 days after entry of an order granting or denying a post-trial motion. Because Local Rule 54.1 affords Young more time than she seeks to file her petition, an extension is unnecessary, and the motion for additional time is denied as moot.

THEREFORE, it is hereby ordered that the defendant's motion for a judgment as a matter of law or, alternatively, for a new trial, remittitur, or alteration of the judgment be DENIED [docket no. 120].

FURTHER, it is hereby ordered that the defendant's motion for a stay of the judgment be DENIED AS MOOT [docket no. 122].

FINALLY, it is hereby ordered that the plaintiff's motion for an extension of time be DENIED AS MOOT [docket no. 124].

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IT IS SO ORDERED THIS 30TH DAY OF JULY, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 8-3-99 BY VT

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-3595/3601/4218

Willie Mae Young, Appellant,	•	Order Denying Petition for Rehearing and for Rehearing En Banc
vs.	•	
City of Little Rock, et al.	•	
Appellees.	•	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

August 14, 2001

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

11/28/01 TUE 15:08 FAX 402 341 8712 COCKLE PRINTING 003

United States District Court
Eastern District of Arkansas
Western Division

INSTRUCTION NO. 7
[Given To Jury]

With respect to the plaintiff's claim that the defendant caused her to be subjected to an unreasonable seizure of her person during the first period, your verdict must be for the plaintiff if all of the following elements have been proved by the preponderance of the evidence:

First, a person or persons acting for the City of Little Rock seized the plaintiff during this period, and

Second, the seizure was unreasonable, and

Third, the person who seized the plaintiff did so pursuant to a policy of the City of Little Rock, and

Fourth, plaintiff suffered damages proximately caused by the seizure.

With respect to the plaintiff's claim that the defendant caused her to be subjected to an unreasonable seizure of her person during the second period, your verdict must be for the plaintiff if all of the following elements have been proved by the preponderance of the evidence:

First, a person or persons acting for the Pulaski County Sheriff's department seized the plaintiff during this period, and

Second, the seizure was unreasonable, and

Third, a policy or custom of the City of Little Rock amounted to deliberate indifference to the Fourth Amendment rights of persons in the plaintiff's position, and

Fourth, the seizure was a direct result of a policy of the City of Little Rock, and

Fifth, the plaintiff suffered damages, proximately caused by the seizure.

[Defendant's Proffered]

JURY INSTRUCTION NO. 7

WITH RESPECT TO THE PLAINTIFF'S CLAIM THAT THE DEFENDANT CAUSED HER TO BE SUBJECTED TO AN UNREASONABLE SEIZURE OF HER PERSON DURING THE FIRST PERIOD, YOUR VERDICT MUST BE FOR THE PLAINTIFF IF ALL OF THE FOLLOWING ELEMENTS HAVE BEEN PROVED BY THE PREPONDERANCE OF THE EVIDENCE:

FIRST, A PERSON OR PERSONS ACTING FOR THE CITY OF LITTLE ROCK SEIZED THE PLAINTIFF DURING THIS PERIOD; AND

SECOND, THE SEIZURE WAS UNREASONABLE WHEN CONSIDERING ALL THE SURROUNDING CIRCUMSTANCES; AND

THIRD, A POLICY OR CUSTOM OF THE CITY OF LITTLE ROCK WAS THE MOVING FORCE BEHIND THE UNREASONABLE SEIZURE; AND

FOURTH, PLAINTIFF SUFFERED DAMAGES PROXIMATELY CAUSED BY THE SEIZURE.

WITH RESPECT TO THE PLAINTIFF'S CLAIM THAT THE DEFENDANT CAUSED HER TO BE SUBJECTED TO AN UNREASONABLE SEIZURE OF HER

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PERSON DURING THE SECOND PERIOD, YOUR VERDICT MUST BE FOR THE PLAINTIFF IF ALL OF THE FOLLOWING ELEMENTS HAVE BEEN PROVED BY THE PREPONDERANCE OF THE EVIDENCE:

FIRST, PLAINTIFF WAS SEIZED DURING THIS PERIOD; AND

SECOND, THE SEIZURE WAS UNREASONABLE WHEN CONSIDERING ALL THE SURROUNDING CIRCUMSTANCES; AND

THIRD, A POLICY OR CUSTOM OF THE CITY OF LITTLE ROCK WAS THE MOVING FORCE BEHIND THE UNREASONABLE SEIZURE; AND

FOURTH, THAT PLAINTIFF SUFFERED DAMAGES PROXIMATELY CAUSED BY THE SEIZURE.

SOURCE: *Board of Commissioner v. Brown*, 117 S. Ct. 1382, 1388 (1997); *Skinner v. Railway Executives' Association*, 109 S. Ct. 1402, 1414 (1989).

[Defendant's Proffered]

JURY INSTRUCTION NO. ___

YOU ARE INSTRUCTED THAT, PURSUANT TO THE LAW OF THE STATE OF ARKANSAS, THE SHERIFF OF EACH COUNTY IN ARKANSAS SHALL HAVE THE CUSTODY, RULE, AND CHARGE OF THE JAIL WITHIN HIS COUNTY AND ALL PRISONERS COMMITTED IN HIS COUNTY, AND HE MAY APPOINT A

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JAILER FOR WHOSE CONDUCT HE SHALL BE RESPONSIBLE.

SOURCE: Ark. Code Ann. § 12-41-502 (Michie Repl. 1995).

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SPEED LETTER

Release

DATE *11-18-96*

TO: PULASKI COUNTY REGIONAL
DETENTION FACILITY
3201 W. ROOSEVELT
LITTLE ROCK, AR. 72204 [illegible] A 11:24

FROM: LITTLE ROCK MUNICIPAL COURT
(CRIMINAL DIVISION)
600 WEST MARKHAM
LITTLE ROCK, AR 72201
371-4509, 371-4739, 3714742 *AKA-Glenda Walker*

PLEASE FILL IN THE APPROPRIATE INFORMATION

Real name
DEFENDANT'S NAME: *Willie Young*

CASE NUMBER(S): *17176*

WARRANT NUMBER(S): _____

CHARGES: *Cont 96-8005*

DEFENDANT COMMITTED: YES _ NO _
CASE TYPE: FELONY _ MISDEMEANOR ✓

REASON COMMITTED: _____

TIME TO SERVE: PLACE TO SERVE: PCRDF ___
___ MONTHS WEEKENDS ___
___ DAYS COMMUNITY SERVICE ___

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